

Congress of the United States

Washington, DC 20510

October 20, 2015

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Mr. Slavitt:

On June 17, 2015, the Center for Consumer Information and Insurance Oversight (CCIIO) released a memo stating the agency's intent to increase the reimbursement rate for insurance companies participating in the transitional reinsurance program. We urge you to consider adopting lower reimbursement rates for plan years 2015 and 2016 and to end the regulatory requirement that self-insured companies and multi-employer health plans contribute to the reinsurance program.

Section 1341 of the *Patient Protection and Affordable Care Act* (PPACA) requires the U.S. Department of Health and Human Services (HHS) to collect \$10 billion from health insurance issuers and third party administrators for plan year 2014, \$6 billion for plan year 2015, and \$4 billion for plan year 2016. The program is not statutorily authorized to continue beyond plan year 2016.

On May 12, 2014, HHS released the final "Notice of Benefit and Payment Parameters for 2015" (RIN: 0938-AR89), setting the coinsurance rate for 2014 in the transitional reinsurance program at 80 percent and the attachment point at \$45,000. Therefore, any non-grandfathered health plan in the individual or small group markets covering a patient whose medical claims costs were between \$45,000 – \$250,000 in 2014 could request reimbursement for up to 80 percent of those expenses. Any excess program fees collected by HHS are to be saved for the next plan year.

Your agency's June 17 memo increases the 2014 reinsurance program reimbursement rate from 80 to 100 percent, creating a disincentive for health plans to more accurately price their products in future years, knowing this federal program will pay a bigger proportion of their claims. Even after the increase in 2014 plan year reimbursement to qualifying health plans, HHS will collect roughly \$1.7 billion more in reinsurance fees than it will pay out in claims. Much of the \$10 billion paid into the program was contributed by employers and union members who are ineligible for reimbursement through the reinsurance program.

We urge you to:

- (1) Maintain the 2015 plan year reimbursement level at the 50 percent coinsurance rate for claims between \$90,000-\$250,000, which was announced in the "Notice of Benefit and Payment Parameters for 2016" (RIN: 0938-AS19);
- (2) Adopt a lower reimbursement rate and attachment point for the 2016 plan year when the final "Notice of Benefit and Payment Parameters for 2017" is released; and,
- (3) Exclude self-insured and multi-employer health plans from the reinsurance fee for the 2016 plan year, thereby limiting the fee to health insurance companies which directly benefit from the program.

Finally, we want to underscore that Section 1341 of PPACA only authorizes a transitional reinsurance program for a "3-year period beginning January 1, 2014". Further, the statute specifically authorizes any additional funds not spent to reimburse health insurance companies are to be "deposited into the general fund of the Treasury." Any attempts by HHS to extend this program beyond the 2016 health benefits plan year through regulations or to use general funds from the Treasury to pay for the implementation of other PPACA programs would be an unlawful action and a rewrite of the law.

Thank you for your time and consideration of this matter. Should you or your staff have comments or questions, please contact our staff: Sarah Arbes (Senate Committee on Health, Education, Labor and Pensions) at (202) 224-6770, Josh Trent (House Committee on Energy and Commerce) at (202) 225-2927, or Michelle Neblett (House Committee on Education and the Workforce) at (202) 225-4527.

Sincerely,



Lamar Alexander
Chairman
Senate Committee on Health,
Education, Labor, and Pensions



Fred Upton
Chairman
House Committee on Energy
and Commerce



John Kline
Chairman
House Committee on Education
and the Workforce

Alan Kim

Jimmy Kim

Tom Sum

Pat Roberts

Fox Barton

Jim M. Gilchrist

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John K. Dancy ^{MD}

Brett Gathorn

Chris Collins

Dilly Long

Tim Walberg

Virginia Foxx

Jake Messer

Rick W. Allen

Michael A. Bishop

Jan Heck

Carl L. Buddy Carter

Greg H. Chaff